

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No.1876 of 1993

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 & 2 : Yes

2 - 5 : No

HEIRS OF ADHYARRU H BHIKHABHAI

Versus

ADARSH PRATHAMIK SHALA

Appearance:

MR CV PRAJAPATI for Petitioners

MR CL SONI for Respondent No. 1, 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/02/98

ORAL JUDGEMENT : (Per B.C. Patel, J.)

The petitioners initially filed contempt application against four respondents, namely,

(i) Adarsh Prathamik Shala;

(ii) Adarsh Educational and Charitable Trust,

notice of which was to be served through

Shri Keshavlal Mohanlal Patel, who was
one of the trustees;

(iii) Adarsh Educational and Charitable Trust,

notice of which was to be served through
Mangiri Shambhugiri, who was one of the
the trustees; and

(iv) Adarsh Educational and Charitable Trust,

notice of which was to be served through
the Administrator Shri Dilipgiri Mangiri
Goswami;

inter alia contending that the respondents have not
carried out the directions given in the award pronounced
by the Gujarat Primary Education Tribunal, Ahmedabad (for
brevity "the Tribunal") in Application No.14 of 1991.

2. The Tribunal held that the applicants of the
above application be paid salary as per Desai Pay
Commission from 22.5.1986 to 25.4.1987; and as per
Central Pay Commission from 25.9.1987 to May 1990, and
resultant difference of salary. Applicant no.1, who has
retired in June 1990 be paid salary till that date and
the other applicants be paid salary from June 1990 till
the date of disposal of the application by account payee
cheque within a period of two months from the date of
order. The opponent - School was further directed to pay
regular salary by account payee cheque.

3. It is contended on behalf of the applicants that
as they are not being paid salaries, this application is
filed. In view of the order passed by the Division Bench
in the case of Girishchandra R. Bhatt and another v.
Dineshbhai N. Sanghvi, Principal, Sanghvi Primary School
and others, XXXVII (1) GLR 812, the applicants ought to
have approached the Tribunal for the benefits instead of
approaching this Court.

4. However, as the applicants have approached this
Court and rule has been issued, we are dealing with this
matter on merits. Since the proceedings are taken to
this Court in this matter in a cavalier fashion, we will
have to enumerate certain facts.

4.1 The school is run by a Trust known as Adarsh
Educational and Charitable Trust. Before the Tribunal
there were only three respondents, namely,

(i) Keshavlal Mohandas Patel,

(ii) Keshavlal Mohanlal Patel, trustee of
Adarsh Educational and Charitable Trust,
and

(iii) Administrative Officer, Ahmedabad
Municipal Corporation, Ahmedabad.

It appears that none appeared for respondent no.3, namely, Administrator while on behalf of respondent no.2, it appears that one advocate Shri B.B. Raval appeared. On behalf of the applicants Shri S.V. Raju appeared. This is apparent from the award of the Tribunal. Before us learned advocate Shri Prajapati, who argued the matter, made a statement that respondents no.5, 6 and 7 came to be added in view of the affidavit filed by Keshavlal Mohandas Patel, the respondent no.1. Along with the affidavit xerox of a certified copy, obtained on 28.12.1990, is produced indicating that respondent no.1 has resigned and names of three persons are added as trustees. He stated this for the first time. The affidavit of Keshavlal Mohandas Patel, which was sworn on 7.1.1994, is required to be referred to at this stage. In nutshell he stated in the affidavit that he is not aware of the proceedings which were initiated before the Tribunal by the petitioners.

4.2 According to the deponent - Keshavlal Mohandas Patel, he was neither served with any summons nor with notice from the Tribunal. He neither appeared nor engaged any advocate to represent him. He has pointed out that he was shown as Principal as well as trustee in the cause title of the order passed by the Tribunal as well as in this petition. In fact he was neither a Principal nor a trustee. He has stated on oath that he has resigned as Principal of the said School as back as in the year 1990. He has also stated on oath that he has resigned too as a trustee of the said trust in the year 1990.

4.3 A Change Report was also submitted before the Charity Commissioner seeking necessary changes in the Register. It appears that said Keshavlal Mohandas Patel, who was deleted, at his request, in this proceedings, as party respondent, had again approached this Court with a view to bring to the notice of the Court certain facts. He has pointed out that Civil Suit No.3015 of 1992 was pending in the City Civil Court, Ahmedabad, instituted by Adarsh Educational and Charitable Trust, through its

trustee, Mangiri Shambhugiri Goswami, wherein the Court, by way of interim measure, directed the deponent Keshavlal Mohandas Patel that he should not disturb possession of Adarsh Educational Trust and he should not enter the premises of the said School.

4.4 He has pointed out that the Change Report was made upto date by the Charity Commissioner, but because of the disputes between them, the said deponent has filed an appeal against the order passed by the Deputy Charity Commissioner. He filed the appeal with an intention to see that persons who are joined as trustees may not enter the premises and may not act as trustees though right from the date of his resignation on 26.12.1990 the deponent did not enter into the School premises and did not act as a trustee. It appears that the deponent was restrained by an order passed by the City Civil Court, Ahmedabad from entering the premises of the School and from disturbing possession of Adarsh Educational and Charitable Trust.

4.5 It is required to be noted that this affidavit is filed by said deponent on 25th July 1994, copy of which has been received on behalf of the applicants. No reply is filed. Therefore, averments made in the affidavit are to be taken as true. Same are neither denied nor controverted by any documentary evidence.

5. According to Shri Prajapati, learned advocate, in view of the affidavit the applicants came to know, for the first time, that others are trustees and therefore, other respondents were joined as opponents. Merely from a look at the petition it appears that the applicants were aware that Mangiri Shambhugiri Goswami, was also a trustee and Dilipgiri Mangiri Goswami was administrator of the trust. The learned advocate states that the notice addressed to said Mangiri Shambhugiri Goswami and Dilipgiri Mangiri Goswami has been returned by the Postal Department. Not only that but the process issued by this Court has also not been accepted by them. His submission is that they have refused to accept the process. For that purpose he has filed an affidavit of Pushpaben, applicant no.3.

6. We fail to understand when Mangiri Shambhugiri Goswami was already joined as party respondent no.3 what was the necessity for the learned advocate to join the the same person as respondent no.5. It appears that he has not looked at the papers and has mechanically joined respondent no.5 as a party, though in fact on record the same party is joined as respondent no.3. The trust,

namely, Adarsh Educational and Charitable Trust is registered with the Charity Commissioner. A register is required to be maintained under the provisions contained in the Bombay Public Trusts Act, 1950. Said trust is registered at serial no.E 1643. As per entry no.382/90 name of Keshavlal Mohandas Patel has been deleted as trustee from the record of the public trust. It also transpires that by entry no.1451/90 the name of three persons came to be included as trustees, namely,

(i) Shri Goswami Mangiri Shambhugiri,
Managing Trustee, D/16, Khodiyar Jyot
Society, Near Thakkar Nagar, Nikol Road,
Ahmedabad - 382 350;

(ii) Shri Barot Bansilal Chimanlal, Trustee,
Setubandh Park, Thakkar Nagar, Ahmedabad
- 50; and

(iii) Shri Samjipari Kanpari Goswami, Trustee,
D - 4/104, Indrajit Society (Bagh), Sikol
Gam Road, Ahmedabad - 50.

7. The learned advocate states that he gave new address of Mangiri Shambhugiri Goswami as;

35/1, 36/1, Satyam Flat,
Bapunagar, Ahmedabad,

which is also the address of Dilipgiri Mangiri Goswami, a newly added respondent no.5. The notice calling upon said persons bear the same address. From the record of the Charity Commissioner, we find the address is altogether different. Learned advocate states that the said trustee has shifted to a different address, namely,

A/12, Moonlight Flat,
Near Bhagwati School,
Thakar Bapa Nagar,
Ahmedabad,

and notice was served at that address and he has refused to accept the same. If said person was not a trustee according to initial case of the applicants and the applicants came to know, for the first time, when notice was given, a question arises as to how applicant no.3 knew him personally. In the affidavit nowhere it is mentioned that applicant no.3, knew Mangiri Shambhugiri Goswami and that she approached him and he refused to accept the process. In absence of specific averments in

the affidavit, on the facts and in the circumstances of the case, a vague affidavit cannot be accepted. It is required to be noted that respondent no.7 is not served. No action is taken to serve the said respondent.

8. We are sorry to point out that there is non application of mind on the part of applicants, in giving address of respondent no.7, as 'Sikol Gam Road'. Name of village being Nikol, it ought to be Nikol Gam Road. Had this much care taken possibly it would not have been returned unserved. When we questioned the learned advocate, he was not able to explain as to where Sikol Gam Road is situated. Ultimately, he stated that it is a genuine mistake. It should be 'Nikol Gam Road' and not 'Sikol Gam Road'.

9. Learned advocate produced a certified copy of Change Report, which clearly reveals that Keshavlal Mohandas Patel is no longer a trustee vide entry no.382/90. From the xerox copy of the report it appears that the same was obtained on 30.3.1993. The Tribunal pronounced the award on 7.4.1993. Therefore, it was the duty of the applicants to point out this fact before the Tribunal. It was the duty of the applicants to join them as opponents before the Tribunal, if they wanted an award against right persons.

10. The contempt proceedings are initiated against respondents nos.3, 5, 6 and 7, who were not joined as parties before the Tribunal. As they were not the parties before the Tribunal, it cannot be said that they have committed breach of the order passed by the Tribunal. They were the persons in charge of the trust as trustee. That fact was within the knowledge of the applicants, yet for reasons best known to them, they did not proceed against right persons, even at a later stage. From the record of the public trust it is also clear that Keshavlal Mohandas Patel, in his capacity as a trustee, resigned in 1990. He was not a trustee thereafter. It is the say of the said Keshavlal Mohanlal Patel that he was no longer a Principal after 1990, more particularly from 26.12.1990, the day on which he resigned as a Principal. Thus, these proceedings can be said to be nothing but abuse of process of law as the applicants have moved this Court for taking action against the persons who were not joined as parties before the Tribunal and against a person who was neither a trustee nor a Principal on the date when proceedings were initiated before the Tribunal.

12. The extract of the register be taken on record.

13. In view of what is stated hereinabove the application is rejected. Rule discharged.

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